Tedzen Dondim, Inc. v National Grid USA
2026 NY Slip Op 30384(U)
January 16, 2026
Supreme Court, Kings County
Docket Number: Index No. 504836/2025
Judge: Anne J. Swern
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At an IAS Term, Part 75 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 16th day of January 2026.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

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TEDZEN DONDIM, INC., 1729 REALTY, CORP., DOMINIQUE MOSELLE REMINICK, and on behalf of all others similarly situated,

Plaintiffs,

-against-

Index No: 504836/2025

Return Date: 10/16/2025

NATIONAL GRID USA, its affiliates, partners, subsidiaries, and related entities and SALLY LIBRERA, President of National Grid,

Defendants.

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Recitation of the following papers as required by CPLR 2219(a):

NYSCEF Doc Nos.:

Notice of Motion and Supporting Documentation..... 11-19, 37
Memoranda of Law in Opposition and Supporting Documentation..... 31-36

Upon the foregoing papers, defendants National Grid USA (National Grid) and Sally Librera move for an order, pursuant to CPLR 3211 (a) (3) and CPLR 3211 (a) (7), dismissing the complaint.

The motion is granted with respect to the first, second, and fourth through seventh causes of actions and that portion of the third cause of action seeking injunctive relief, and all are dismissed as insufficient and/or barred by documentary proof. The portion of the motion addressed to the declaratory judgment action in the third cause of action is deemed a motion seeking a declaration in defendants' favor and is granted.

Background

In this putative class action, plaintiffs allege that National Grid and its affiliates impose unjust tariffs on them and putative class action plaintiff customers in Kings County who, in response to emergencies involving fuel system failures, seek the assistance of National Grid to override the automatic fuel switch from gas to oil heat during cold weather conditions. According to the amended complaint (NYSCEF DOC. #7), plaintiff 1729 Realty Corp. (1729 Realty) is the owner of a 59-unit apartment building located in Brooklyn (the building), plaintiff Tedzen Dondim, Inc. (Tedzen Dondim) is the utility and furnace management company for the building, and plaintiff Dominique Moselle Reminick is a tenant who resides in the building (amended complaint at 1). Defendant National Grid USA (National Grid) provides natural gas to residential and commercial customers in New York and defendant Sally Librera is National Grid's president (amended complaint ¶ 5).

As is relevant here, plaintiffs allege that, on or about December 22, 2024, National Grid automatically switched the building's fuel source from gas to oil when the temperature dropped to 20 degrees (amended complaint at ¶ 9).[1] After this automatic switch, the oil pump on the building's boiler malfunctioned and this malfunction required that the boiler be shut down for oil use (amended complaint at ¶ 10). Because the boiler could still safely operate using gas, plaintiffs attempted to contact National Grid to switch

[1] Plaintiffs assert that National Grid had misclassified plaintiffs as customers without automatic switching abilities despite the fact that plaintiffs' system can switch automatically. Under the manual switch classification, a customer is required to switch the Building's fuel source from gas to oil when the temperature drops to 20 degrees, while customers with automatic switching capabilities are switched when the temperature reaches 15 degrees (amended complaint at ¶ 9).

the fuel source back to gas (amended complaint at ¶ 11). After initially having difficulty reaching anyone at National Grid capable of switching the fuel source back to gas using the publicly available telephone numbers, plaintiffs, using a "secret" number provided by plaintiff's boiler repair company, finally reached a National Grid employee who made the switch back to gas (*id.*). Despite the "emergency" nature of the request to resume gas service, "and without any prior notice or opportunity to contest," National Grid imposed a "tariff" for the gas used during the period between December 22, 2024 at 10:00 p.m. through December 23, 2024 at 11:30 a.m. (amended complaint at ¶ 12).

Plaintiffs, in the amended complaint, allege that National Grid, in violation of General Business Law § 349, engaged in deceptive business practices by, among other things, imposing tariff fees and other penalties and failing to disclose in advance (first cause of action) (amended complaint at ¶¶ 25-26). As part of this Section 349 cause of action, plaintiffs also complain that the notice National Grid sent them after the shutoff was misleading (amended complaint at ¶¶ 35-39, 41) and assert that defendants had a duty to ensure the proper functioning of the alternative heating system, that the switch to alternative fuels could be overridden in the event of emergencies without penalties, and that there were grace periods to make necessary repairs (amended complaint ¶¶ 28-29, 31, 39-40). Plaintiffs' also assert a cause of action for unjust enrichment based on the unjustified imposition of the tariffs (second cause of action) (amended complaint ¶¶ 42-45), a cause of action for declaratory and injunctive relief (third cause of action) (amended complaint ¶¶ 46-49), a cause of action based on due process violations under the state and federal constitutions (fourth cause of action) (amended complaint ¶¶ 50-60),

a cause of action premised on violations of environmental laws (fifth cause of action) (amended complaint ¶¶ 61-69), a cause of action against Librera for deceptive business practices in violation of General Business Law § 349 (sixth cause of action) (amended complaint ¶¶ 70-75), and a cause of action against Librera for negligence and violation of fiduciary duty (seventh cause of action) (amended complaint ¶¶ 76-81).

Following the filing and service of the amended complaint, defendants removed the action to federal court based on federal question jurisdiction (NYSCEF DOC. #16). After removal, plaintiffs moved in federal court to remand this action back to state court (*id.*). In its order granting plaintiff's remand motion, the federal district court stated that, "[s]ince Plaintiffs claim that any federal causes of actions alleged in their state court complaint [i.e. the claims under the United States Constitution and the Clean Air Act] were 'incidental' and that they are not pursuing any federal claims, the Court construes Plaintiffs as having voluntary dismissed their federal claims under Federal Rule of Civil Procedure 41(a)(2)" (*id.* at 2 [remand order]). Once the action was remanded to this court, defendants made the instant motion to dismiss.

Discussion

On a motion to dismiss a complaint for failure to state a cause of action under CPLR 3211 (a) (7), a court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *see Goldberg v KOSL Bldg. Group., LLC*, 236 AD3d 995, 996 [2d Dept 2025]; *Boyle v North Salem Cent. Sch. Dist.*, 208 AD3d 744, 745 [2d Dept

2022]). "At the same time, however, 'allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration' " (*Simkin v Blank*, 19 NY3d 46, 52 [2012], quoting *Maas v Cornell Univ.*, 94 NY2d 87, 91 [1999]). "[W]here evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211 (a) (7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one and, unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate" (*4 Colonial Dr., LLC v Suburban Consultants, Ltd.*, 242 AD3d 1155, 1157-1158 [2d Dept 2025] [internal quotation marks omitted]; *see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

"A motion to dismiss a complaint pursuant to CPLR 3211 (a) (1) may be granted only if the documentary evidence submitted by the moving party utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law" (*Hamer v FPG Am., LLC*, 235 AD3d 624, 625 [2025] [internal quotation marks omitted]; *see 533 Park Ave. Realty, LLC*, 156 AD3d 744, 746 [2017]).

Defendants initially argue that plaintiffs do not have standing to sue National Grid because National Grid is merely an indirect parent company of the Brooklyn Union Gas Company, the entity that actually provided the gas service at issue (CPLR 3211 [a] [3]). The issue of whether National Grid is a correct defendant, however, does not relate to whether plaintiffs have standing (*see Society of Plastics Indus. v County of Suffolk*, 77

NY2d 761, 772-775 [1991]), but to whether plaintiffs have a cause of action as against it. Defendants' proof, consisting of an affirmation from its secretary, however, fails to demonstrate that it is an improper defendant in the context of this motion to dismiss because the affidavit does not constitute documentary evidence for purposes of CPLR 3211 (a) (1) (*see Curran v Village of Amityville*, 241 AD3d 868, 870 [2d Dept 2025]) or show that plaintiff's allegations regarding National Grid's role are not facts at all for purposes of CPLR 3211 (a) (7) (*see 4 Colonial Dr., LLC*, 242 AD3d at 1157-1158; *Hall v Integrity Real Estate Props., Inc.*, 124 AD3d 1270, 1271-1272 [4th Dept 2015]; *Dabb v NYNEX Corp.*, 262 AD2d 1079, 1080 [4th Dept 1999]; *Pietrosanto v NYNEX Corp.*, 195 AD2d 843, 843-844 [3d Dept 1993]).

In addressing plaintiffs' claims, defendants next assert that the General Business Law § 349 and Unjust Enrichment causes of action are barred by the filed rate doctrine. "The filed rate doctrine bars actions against federal- and state-regulated entities which are 'grounded on the allegation that the rates charged by [those entities] are unreasonable' " (*W. Park Assoc., Inc. v Natl. Ins. Co.*, 113 AD3d 38, 46 [2d Dept 2013], quoting *Wegoland Ltd. v NYNEX Corp.*, 27 F3d 17, 18 [2d Cir 1994]; Public Service Law § 66 [12]). " 'Simply stated, the doctrine holds that any "filed rate"--that is, one approved by the governing regulatory agency . . . is per se reasonable and unassailable in judicial proceedings brought by ratepayers' " (*id.*, quoting *Wegoland Ltd.*, 27 F3d at 18). Thus, "a consumer's claim, however disguised, seeking relief for an injury allegedly caused by the payment of a rate on file with a regulatory commission, is viewed as an attack upon the rate approved by the regulatory commission" and, therefore, barred by the doctrine (*Porr*

v NYNEX Corp., 230 AD2d 564, 568 [2d Dept 1997], *lv denied* 91 NY2d 807 [1998]; *see also W.Park Assoc.*, 113 AD3d at 46).

In moving, National Grid has supplied a copy of the relevant portions of the tariff governing its services provided in Brooklyn that has been filed with the Public Service Commission (PSC) (Tariff) (NYSCEF DOC #13).[2] With respect to safety related issues, the Tariff provides that, "[a]t the request of the customer, the Company will provide service for safety related calls free of charge. Such service includes responding to calls concerning gas leaks and the smell of gas odor" (Tariff at leaf 65).

The Tariff also outlines the terms, conditions, and rates relating to the mandated cold weather switch from gas to oil fuel (Tariff at leaf 427.34 to leaf 427.45). The Tariff identifies customers with fully automatic switching equipment as tier 1 customers and those without fully automatic equipment as tier 2 customers (Tariff at leaf 427.34 to leaf 427.34.2). The regular per therm rate for tier 1 customers is slightly higher than the rate for tier 2 customers (Tariff at leaf 427.34 to leaf 427.34.1)[3] and the Tariff allows tier 1

[2] This copy of the tariffs or rates is admissible without certification and is prima facie evidence of the filed original (CPLR 4540 [d]; *Schlesinger v Con Edison Co. of N.Y.*, 1 Misc 3d 903 [A], 2003 NY Slip Op 51493[U], *3 [Civ Ct, Kings County 2003]). The court notes that a link to the full tariff is available on the PSC's website (https://ets.dps.ny.gov /ets_web/search/searchShortcutEffective.cfm?serviceType=GAS). Further, even if the requirements of CPLR 4540 (d) were not satisfied here, the court could take judicial notice of the tariff since it is posted on an official government website (*see Matter of Katonah-Lewisboro Union Free Sch. Dist. v New York State Educ. Dept.*, 243 AD3d 66, 71 [3d Dept 2025]; *Lin v Banko*, 219 AD3d 1510, 1512 [2d Dept 2023]; *Kingsbrook Jewish Med. Ctr. v Allstate Ins. Co.*, 61 AD3d 13, 20 [2d Dept 2009]). Although defendants did not specifically invoke CPLR 3211 (a) (1) as part of their moving papers, the filed tariff is undoubtedly of the kind of document that may be properly considered under that section (*see K.M. v Ursuline Sch. of New Rochelle*, 241 AD3d 673, 675 [2d Dept 2025]), and plaintiffs have raised no objection to its consideration or argued that it is inapplicable.

[3] For tier 2 customers, the basic per therm rate is $0.2271 per therm or $.0.1890 per therm depending on their classification and for tier 1 customers the basic per therm rate is $0.284 per therm or $0.2360 per therm depending on their classification (Tariff at leaf 427.34 to leaf 427.34.1).

customers to elect to be treated as tier 2 customers (Tariff at leaf 427.34.2).[4] Aside from providing for the rate charged when a customer is unable to switch to the oil fuel as required (Tariff at leaf 427.42), the Tariff specifically provides that it is the customer's responsibility to "maintain dual-fuel equipment" and that the customer "agrees to be solely responsible for the service, maintenance, repair and upkeep of all Customer-owned equipment, including dual-fuel equipment and all associated control devices" (Tariff at leaf 428.38). Notably, the Tariff provides that "[t]he Company assumes no responsibility for the adequacy of standby facilities and will not be liable for any loss, damage or expense, direct or indirect that may be incurred by the Customer or others in connection with or as a result of any curtailment or discontinuance of gas service pursuant to this Rate Schedule" (*id.*) and that "[n]o malfunction or failure of any control equipment or devices will excuse Customer from complying with this or any of its obligations under this Rate Schedule" (Tariff at leaf 428.39).

Plaintiffs, in opposition, assert that the filed tariff doctrine is not a bar to their claim because their claim is not against the reasonableness of the filed rates. Rather, plaintiffs assert that defendants, among other issues, imposed hidden tariffs, misrepresented the terms of the tariff, failed to disclose the penalties, and imposed charges contrary to the tariff's provision. These assertions, however, fail to demonstrate

[4] With respect to this election, the Tariff provides that, "[f]or the winter period commencing November 1, 2021, customers with automatic switching equipment had to provide their tier election by September 1, 2021 to commence October 1, 2021. Beginning with Winter 2022/2023, customers with automatic switching equipment must provide 120 days' notice to choose a tier for the upcoming winter period commencing November 1st. Customers with automatic switching equipment that do not request a specific tier will be placed in Tier 1. This election is for the entire year (November — October)" (Tariff at leaf 427.34.2).

the inapplicability of the doctrine primarily because a customer is conclusively presumed to know the filed rate (*see Porr*, 230 AD2d at 575-576; *Marcus v AT&T Corp.*, 138 F3d 46, 63-64 [2d Cir 1998]; *Richardson v Standard Guar. Ins. Co.*, 371 NJ Super 449, 468-469, 853 A2d 955, 966-967 [App Div 2004]; *see also Doyle v AT&T Corp.*, 304 AD2d 521, 522 [2d Dept 2003]; *Maislin Industries, U.S., Inc. v Primary Steel, Inc.*, 497 US 116, 127 n9 [1990]). In view of this presumed knowledge, defendants cannot be deemed to have misrepresented the terms of the tariff or be deemed to have failed to have disclosed the penalties that apply when a customer is unable to switch to oil heat when required by the tariff (*see Doyle*, 304 AD2d at 522; *Porr*, 230 AD2d at 574-576).

Specifically with respect to plaintiffs' General Business Law § 349 cause of action, given that a customer is presumed to know defendants' practices covered by the tariff, relating to the cold weather switch to oil fuel, any failure by defendants to inform plaintiffs of the Tariffs' terms cannot be deemed misleading for purposes of such a claim (*see Porr*, 230 AD2d at 574-576; *see also Doyle*, 304 AD2d at 522; *Evanns v AT&T Corp.*, 229 F3d 837, 840-841 [9th Cir 2000], *cert denied* 533 US 911 [2001]).[5] Plaintiffs' assertion as part of their section 349 claim that defendants' improperly charged plaintiff for a safety related call and failed to dispatch a technician to assess the situation, in violation of the terms of the Tariff, is based on plaintiffs' misconstruing the Tariff. As is

[5] The court notes that the only specific affirmative misstatements alleged by plaintiffs relate to certain statements in National Grid's January 15, 2025 letter addressed to Tedzen Dondim. This letter, however, actually appears to accurately restate the charges and potential penalties that arise from a customer's inability to switch to oil heat and any possible inaccuracies or incorrect statements contained in the letter are not misleading in a material way as is required to state a General Business Law § 349 cause of action (*see Stutman v Chemical Bank*, 95 NY2d 24, 29 [2000]; *Andre Strishak & Assoc. v Hewlett Packard Co.*, 300 AD2d 608, 609-610 [2d Dept 2002]).

evident from the provisions of the Tariff discussed above, the free emergency service relates to gas leaks and similar such emergencies (Tariff at leaf 65) and a failure of customer equipment that precludes switching from gas to oil fuel is not such an emergency given that the Tariff expressly provides for the charges imposed for failing to switch to oil fuel and states that it is the customer who bears the responsibility to maintain the duel fuel system (Tariff at leaf 428.38 and leaf 428.39). Although plaintiffs also assert that they should have been paying a rate of $0.170 per therm rather than the rate they paid of $0.189 per therm (amended complaint at ¶ 34), the $0.189 per therm rate is the filed rate for a tier 2 customer as of September 1, 2024 (Tariff at leaf 427.34.1). Plaintiffs' allegations that defendants failed to provide "contact information" or "clear communication" channels, while perhaps reflective of poor customer service, are simply not "misleading" or "deceptive" practices within the meaning of section 349 (*see Gomez-Jimenez v New York Law Sch.*, 103 AD3d 13, 17 [1st Dept 2012], *lv denied* 20 NY3d 1093 [2013]; *Andre Strishak & Assoc. v Hewlett Packard Co.*, 300 AD2d 608, 609-610 [2d Dept 2002]). Thus, plaintiffs do not have a General Business Law § 349 cause of action.

For essentially the same reasons, plaintiffs do not have an unjust enrichment claim because they paid the filed rate (*see Porr*, 230 AD2d at 574-576; *Evanns*, 229 F3d at 840-841).

Plaintiffs have also failed to state a due process claim under the state constitution since their conclusory assertions of state involvement fail to make out the required element of state action in view of plaintiffs' pleading concession that National Grid is a

privately owned entity (*see Montalvo v Consolidated Edison Co. of N.Y.*, 92 AD2d 389, 393-398 [1st Dept 1983], *affd for the reasons below* 61 NY2d 810 [1984]; *Taylor v Consolidated Edison Co. of N.Y., Inc.*, 552 F2d 39, 44-45 [2d Cir 1977], *cert denied* 434 US 845 [1977]).[6]

Although plaintiffs broadly assert that the gas to oil switch - particularly in view of the purported misclassification as a tier 2 customer[7] - violated state and local environmental laws, plaintiffs have failed to identify any particular provision of these laws that was violated under the circumstances here. Moreover, these laws generally only provide that they may be enforced by governmental departments or agencies and do not allow for a private right of action based on a violation of their provisions (*see Geysir Sales Corp., Inc. v Artic Glacier, Inc.*, 78 AD3d 653, 653-654 [2d Dept 2010]; *Nowak v Madura*, 304 AD2d 733, 733 [2d Dept 2003]; *see also* Administrative Code of City of NY §§ 24-105 [empowering the Commissioner of the Department of Environmental Protection to enforce certain air contaminant provisions]; NY City Charter § 651 [empowering the Office of Building Energy and Emissions Performance to oversee compliance with emissions standards under Local Law No. 97]). Finally, given that plaintiffs did not address the environmental claims in their opposition papers, they must be deemed to have abandoned them (*see Hyman v Richmond Univ. Med. Ctr.*, 239 AD3d

[6] As noted above, plaintiffs withdrew their federal constitutional and statutory claims at the time they moved to remand the action back to this court.
[7] Plaintiffs' conclusory assertion that they were misclassified as a tier 2 customer fails to address how this could have occurred given the terms of the Tariff, which provides, as noted above, that a customer with automatic switching capabilities is by default deemed to be a tier 1 customer unless they affirmatively elect to be treated as a tier 2 customer by giving notice to National Grid (Tariff at leaf 427.34.2).

617, 619 [2d Dept 2025]; *see also HSBC Bank USA, N.A. v Amundson*, 241 AD3d 889, 892 [2d Dept 2025]).

The action as against Librera, in her role as National Grid's president must be dismissed for the same reasons as outlined as against National Grid. In addition, even if plaintiffs had a cause of action against National Grid, the conclusory assertions of Librera's involvement in National Grid's actions relating to the switch from gas to oil fuel as is relative to plaintiffs simply fails to make out the kind of personal involvement necessary to hold her personally liable (*see Kats v East 13th St. Tifereth Place, LLC*, 73 AD3d 706, 707-708 [2d Dept 2010]; *see also Travelsavers Enters., Inc. v Analog Analytics, Inc.*, 149 AD3d 1003, 1007 [2d Dept 2017]; *cf. Polonetsky v Better Homes Depot*, 97 NY2d 46, 55 [2001]; *PDK Labs, Inc v G.M.G. Trans W. Corp.*, 101 AD3d 970, 973-974 [2d Dept 2021]).

Because plaintiffs do not have a meritorious cause of action as against defendants under any legal theory, the portion of the third cause of action seeking injunctive relief is dismissed.

With respect to the portion of the third cause of action seeking a declaratory judgment, it appears that plaintiffs have sufficiently pleaded the existence of a justiciable controversy for purposes of CPLR 3001 (*see Matter of 22-50 Jackson Ave. Assoc., L.P. v County of Suffolk*, 216 AD3d 943, 946-947 [2d Dept 2023]). However, as defendants have, for the reasons stated regarding the other causes of action, demonstrated that no questions of fact are presented by plaintiffs' amended complaint, this court deems the portion of defendants' motion addressed to the declaratory judgment cause of action as

one seeking a declaration in their favor and grants the motion (*see id*.; *see also Matter of Town of Riverhead v County of Suffolk*, 237 AD3d 944, 948 [2d Dept 2025], *lv denied* 44 NY3d 904 [2025]).

In sum, the motion to dismiss is granted with respect to the first, second, and fourth through seventh causes of actions, and the portion of the third cause of action seeking injunctive relief, are dismissed because they are insufficient and/or barred by documentary proof. The portion of the motion addressed to the declaratory judgment action in the third cause of action is deemed a motion seeking a declaration in defendants' favor and is granted.

Accordingly, it is hereby

ORDERED, that defendants' motion per CPLR § 3211 [a] [3] and § 3211 [a] [7] is granted, and it is further

ORDERED that the first, second and fourth causes of action in the amended complaint are dismissed in their entirety, and it is further

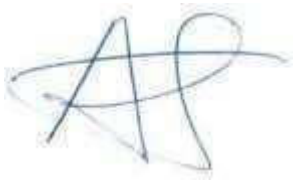
ORDERED that the portion of the third cause of action for injunctive relief is dismissed, and it is further

ORDERED that the portion of the third cause of action seeking a declaratory judgment is granted in defendants' favor, and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision, order and declaratory judgment of the court.

E N T E R,



HON. ANNE J. SWERN, J.S.C.
Dated: 1/16/2026